



**COURT OF APPEALS FOR THE  
FIRST DISTRICT OF TEXAS AT HOUSTON**

**ORDER**

Appellate case name: Ex parte Joseph Gomez  
Appellate case number: 01-20-00004-CR & 01-20-00005-CR  
Trial court case number: 1657519 & 1657521  
Trial court: 338th District Court of Harris County

Appellant Joseph Gomez filed a motion asking this Court to designate the opinion in this case for publication.

Rule 19.3 of the Texas Rules of Appellate Procedure permits an appellate court whose plenary power has expired to order its opinion published in accordance with Rule 47. *See* TEX. R. APP. P. 19.3, 47. Rule 47.2(b) requires that a majority of the panel designate the opinion as “publish” or “do not publish” before it is handed down. TEX. R. APP. P. 47.2(b). It further provides: “Any party may move the appellate court to change the notation, but the court of appeals must not change the notation after the Court of Criminal Appeals has acted on any party’s petition for discretionary review or other request for relief.” *Id.* In addition, the “Court of Criminal Appeals may, at any time, order that a ‘do not publish’ notation be changed to ‘publish.’” *Id.*

This Court’s plenary power expired when the State filed a petition for discretionary review. *See Vidales v. State*, 471 S.W.3d 457, 458 (Tex. Crim. App. 2015) (holding that court of appeals does not retain plenary jurisdiction after a petition for review is filed in the Court of Criminal Appeals); *see also* TEX. R. APP. P. 19.2 (providing that plenary power of court of appeals continues after the filing of a petition for review in the Supreme Court but not extending the rule to the Court of Criminal Appeals). In addition, the Court of Criminal Appeals issued an order granting the State’s motion to recall the mandates in these cases.

Because the Court of Criminal Appeals has acted on a party's request for relief, Rule 47 does not authorize this Court to designate the opinion in this case for publication. *See* TEX. R. APP. P. 47.2(b). Because we otherwise lack plenary power, we **dismiss** this motion.

It is so ORDERED.

Judge's signature:       /s/ Peter Kelly        
☐ Acting individually    ☒ Acting for the Court

Panel consists of Justices Keyes, Kelly, and Landau.

Date: September 10, 2020